IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5579 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIHABHAI PRABHUDAS PATEL

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 5579 of 2002

MRS NISHA M PARIKH for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

MR RV DESAI ASST GOVERNMENT PLEADER for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 20/09/2002

ORAL JUDGEMENT

Mrs.Nisha M. Parikh, learned counsel for the petitioner states and submits that the petitioner is a primary school teacher appointed in the Primary School run by the District Primary Education Committee of Kachchh District Panchayat, the petitioner was involved in a criminal case and was arrested on 10th June, 2001. The petitioner remained in custody till he was enlarged

on bail by the Sessions Judge on 2nd October, 2001. However, the petitioner was enlarged on bail subject to condition that the petitioner was not to leave Mehsana District and as result thereof, the petitioner could not report for his duties at primary school in Kachchh District. The petitioner was ultimately acquitted by the learned Sessions Judge upon trial of Sessions Case No.156 / 2001 vide judgment and order dated 25th February, 2002.

The petitioner, accordingly, reported for duty after said judgment of acquittal. By his application dated 12th March, 2002 [Annexure-E], the petitioner requested the Principal of the School to permit the petitioner to resume duty. Moreover, the petitioner also submitted similar applications before the District Primary Education Officer of Kachchh District Panchayat. However, the respondent authorities have not permitted the petitioner to resume duty. No departmental inquiry is pending against the petitioner.

2. Mr.H.S.Munshaw, learned counsel for respondent authorities submits that the Director of Primary Education has already informed the respondent authorities by letter dated 11th April, 2002 that the respondents are permitted to place the petitioner under suspension, and, therefore, the petitioner is not permitted to report for duty.

That letter is produced along with reply affidavit.

3. It appears from the letter dated 11th April, 2002 of the Director of Primary Education that this letter was written on the basis of the Court order dated 13th June, 2001 rejecting petitioner's bail at that point of time. In fact, it appears that attention of the Director of Primary Education is not invited to the fact that vide judgment and order dated 25th February, 2002 the petitioner has been acquitted by the Criminal Court, hence, said communication dated 11th April, 2002 cannot justify the stand of the respondents not to permit the petitioner to resume duty even after judgment of acquittal.

4. In view of above discussion, petition is allowed. The impugned communication dated 11th April, 2002 based on the order dated 13th June, 2001 rejecting the petitioner's bail application at that point of time, cannot be permitted to be acted upon. The respondents shall act on the basis of the petitioner's acquittal by the Criminal Court as per the judgment and order dated

25th February, 2002 and shall permit the petitioner to resume his duties within a period of one week from the date of receipt of the writ of this Court or a receipt of a certified copy of this order, whichever is earlier. As regards the intervening period, the respondents shall pass appropriate orders in accordance with law after giving the petitioner a reasonable opportunity of being heard.

Rule is made absolute accordingly.
Direct Service is permitted.

Date : 20-9-2002 [M.S.Shah, J.]
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